FRONT Report LINE

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Crossing lines

New law allows for 'hot pursuit'

Since 1986, Missouri law has not allowed police officers to leave their geographic jurisdictions, even in "hot pursuit" of a felon. Once an officer crossed his or her city limit or county line, the officer had no law enforcement authority.

Senate Bill 180 has changed that. Section 544.157 now allows any **certified** peace officer to engage in the "fresh pursuit" of someone whom the officer **(1)** has probable cause to believe has committed a felony in his or her jurisdiction or **(2)** has committed any other criminal offense or ordinance violation in the presence of the officer in his or her jurisdiction.

The state Legislature has, however, imposed one limitation on vehicular hot pursuits outside an officer's jurisdiction. Hot pursuits in a vehicle are permitted only if the agency has a written pursuit policy that includes these minimum standards:

1. Supervisor control of the pursuits;
2. The number of vehicles that can be involved;
3. A policy for coordinating pursuits with other jurisdictions; and
4. Guidelines for the officer to weigh the safety factors against the need to pursue.

INSIDE THIS ISSUE

A message
From Attorney General JAY NIXON

About the premiere issue

I'm very pleased to provide Missouri's law enforcement community with the premiere issue of **Front Line Report.** This newsletter will detail changes in statutes, profile case law summaries, and spotlight criminal proposals in the Legislature.

As we increasingly are asked to do more with fewer resources, the need to disseminate information that allows us to better protect citizens becomes more important.

I will work hard to ensure that you will have ready access to information that benefits us all by having a better informed and more knowledgeable police force.

Ted Bruce, editor of **Front Line Report** and an experienced lawyer in the Criminal Division, has worked hard to present information in a useful, easy-to-read and timely manner.

The newsletter will be published periodically as laws change, cases break and legislative proposals are created.

"An informed law officer is an effective enforcer."

Attorney General
Jay Nixon

SUMMARY: CRIMINAL LEGISLATION

Among the more important portions of the criminal law that were amended or added during the last legislative sessions were:

■ **Expungements:** Arrest records now can be expunged within three years of the arrest if the individual had no prior felony convictions and if the arrest was made without probable cause.

■ **DWI:** The prior and persistent DWI offender provisions were amended so that a second offense is a Class A misdemeanor (one year) and a third offense is a Class D felony (five years).

Courts can impose as a cost against a defendant the costs of a law enforcement agency to arrest and process a drunken driver.

New crimes of "boating while intoxicated" and "flying while intoxicated" were created.

■ **Evidence:** Photographs of wrongfully taken property, accompanied by an affidavit of the photographer, can be used in court instead of the police agency having to retain the property and submit the actual property at trial.

■ **Bail:** Bail now can be denied if a defendant poses a danger if released. Bail is denied entirely for persons appealing a conviction for murder, drug trafficking, assault in the first degree, forcible rape, or where the sentence is life imprisonment.

■ **Stalking:** A new crime of "stalking" has been created when a person purposely and repeatedly harasses or follows another person with the intent of harassing. "Aggravated stalking" occurs when a credible threat also accompanies the harassment.

■ **Insanity defense:** The "insanity defense," where a person suffers from a mental disease or defect, no longer is available by proving the defendant was incapable of conforming his conduct to the law. Now the defense is available only if the defendant can show that he could not understand the wrongfulness of his conduct.

UPDATE: CASE LAWS

State v. Romauldo Suarez, No. W.D. 45660
(Mo.App., W.D. Oct. 26, 1993)

The trial court did not err by allowing the state to place a screen between the rail and the spectator section of the courtroom to prevent the public from identifying an undercover narcotics agent.

The state advised that the officer still was working undercover in the same community and feared for his safety. The screen would block the view of the witness from the spectators only.

In this case, the trial was not closed. It was open and public except the spectators, if any, could not view the undercover agent. Also, there were no spectators in the courtroom during the agent's testimony.

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State v. Donald Eugene Daleske, No. W.D. 47341
(Mo.App., W.D. Nov. 2, 1993)

There was insufficient evidence that the defendant committed

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UPDATE: CASE LAWS

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forcible sodomy by way of forcible compulsion.

In this case, the evidence showed that the defendant, who was the stepfather of the 17-year-old victim, began sexually abusing her when she was about 7.

These incidents usually occurred in the morning. The defendant would tell the victim the night before that he wished to spend time with her, which meant she was to go into his bedroom in the morning.

According to the court's conclusion, "there was no evidence of forcible compulsion, [but] this is not to say that Daleske employed no compulsion."

Indeed, the compulsion involved in introducing a child to these activities arises from the dependency and age of the child. Once the child has been drained of self respect, compliance may tend to continue. However, this kind of compulsion, at least based on the evidence in this case, fails to attain the level contemplated by the definition of "forcible compulsion in the statute."

■■■

State v. Robert M. Meanor, No. 75787
(Mo.banc Oct. 26, 1993)

The court found sufficient evidence of involuntary manslaughter and that the defendant was under the influence of drugs and alcohol.

The court found that the police officer's opinion that the defendant was intoxicated through the ingestion of alcohol and marijuana clearly was inferable from circumstantial evidence.

In this case, a lay witness testified the defendant appeared intoxicated by ingesting drugs. The court was not addressing the admissibility of a trooper's opinion of the appellant's intoxication, but rather the sufficiency of the evidence.

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State v. Terrance J. Jones, Sr., No. 75866
(Mo.banc Oct. 26, 1993)

The trial court erred in submitting a verdict director for unlawful possession of a concealable firearm that did not require any finding of a culpable mental state.

While the offense of unlawful possession of a concealable weapon, under Section 571.070.1 RSMo. 1986, makes no reference to the culpable mental state, a culpable mental state beyond criminal negligence is required under former Section 562.021.2. When MAI-CR3d 331.28 is used, "possession" must be defined. This definition also adds the required culpable mental state.

The state relied on a line of cases beginning with **State v. Bean,** 720 S.W.2d 21 (Mo.App., 1986), which relied on the lack of any reference to a requirement of a culpable mental state in the unlawful possession of a concealable firearm statute to conclude that it was not necessary to prove a culpable mental state in a prosecution under the statute.

Bean has been followed by **State v. Wisham,** 725 S.W. 2d 627 (Mo.App., 1988), and **State v. Mosby,** 755 S.W.2d 614 (Mo.App., 1988). To the extent that Bean and its progeny are contrary to the opinion, they are overruled.

■■■

State v. Roy Ramsey, Jr., No. 73629
(Mo.banc Oct. 26, 1993)

The court reiterated that under **State v. Mease,** 842 S.W. 2d 98 (Mo.banc 1992), the pretextual arrest doctrine no longer is applicable in Missouri.

"So long as police do no more than they are legally permitted to do, the officer's motives in making the arrest are irrelevant."

The court noted that the U.S. Supreme Court case of **Booth v. Maryland,** which refused to admit victim impact evidence during the punishment phase of a death penalty trial, has been overruled by the Supreme Court in **Payne v. Tennessee.**

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